

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





**ORIGINAL**

**77-1063**

B  
PJS

**United States Court of Appeals  
For the Second Circuit**

THE UNITED STATES OF AMERICA,

*Appellee,*

-against-

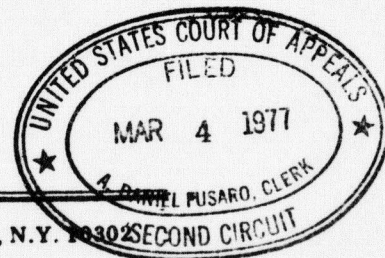
WILLIAM CORTES-RIOS,

*Appellant.*

On Appeal From The United States  
District Court For The Southern  
District Of New York

APPELLANT'S APPENDIX

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DOCKET ENTRIES

9/1/76 - Filed indictment and ordered sealed. B/W ordered. Werker, J. Bail fixed in the amount of one million dollars cash or surety. Werker, J.

9/2/76 - Indictment ordered unsealed. Werker, J.

9/9/76 - Pleading adjourned to 9/16/76. Haight, J.

9/16/76 - Pleading adjourned to 9/23/76 . Duffy, J.

9/23/76 - Pleading adj'd to 9-30-76. Palmieri, J.

9/24/76 - Deft. (atty. present) Produced on a writ, Defendant thru interpreter Norma Seltzer (sworn) pleads not guilty. Defendant continued remanded in lieu of bail of One Million Dollars fixed by Judge Werker on 9/1/76. Case assigned to Judge Goettel for all purposes. Palmieri, J.

9/27/76 - Filed defendants notice of appearance by Weingard and Broudny, 401 Broadway, New York 100123

10/01-76 - Filed Magistrates Records received from the U.S.D.C. San Juan, Puerto Rico.

10/19/76 - Pre Trial conference held, notice of appearance filed. Robert Blossner. Date set for trial 11/15/76 at 10 A.M. Goettel, J.

10/19/76 - Filed notice of appearance of Robert Blossner, as attorney for defendant.

11/08/76 - Filed one envelope containing documents ordered sealed and impounded. - Goettel, J. (placed in cashiers vault)

11/5/76 - Defendant withdraws plea of Not Guilty and pleads guilty to counts 1 and 2 only Pre. sentence report



ordered. Sentencing adj. to 12-22-76 at 9:30 AM Goettel, J.

11/23/76 - Defendant (U.S. atty) Con Buchwald and defendants atty. Stanley L. Shapero present. Interpreter Graciella Lonus, Defendant pleads Guilty to counts 1 and 2 again. Goettel, J.

12/13/76.- Filed Transcript of record of proceeding, dated 10/7/76.

12/14/76 - Filed Transcript of record of proceedings dated 9/24/76.

12/22/76 - Filed Judgment and Commitment (Atty present) the defendant is hereby committed to the custody of the attorney General or his authorized representative for imprisonment for a period of TWELVE (12) YEARS on each of counts 1 and 2 to run concurrently with each other. Pursuant to the provisions of Section 841 of Title 21 U.S. Code, the defendant is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement and the defendant is FINED \$20,000 on each of counts 1 and 2 to run concurrently with each other. Fine to be paid or defendant to stand committed until the fine is paid or he is otherwise discharged according to law. Defendant to be credited for time already served. Counts 3 and 4 are dismissed on motion of defendant's counsel with the consent of the government. Gottel, J. issued copies.

1/5/77 - Filed commitment and entered return Defendant delivered to Warden. Filed defendant No. HD9RTS on 12/22/76.

1/13/77 - Filed Defendants affidavit and notice of motion for relief pursuant to Rule 4(b) of the F.R. of Appellate Procedure. Ret. 01-17-77.

12-28-76 - Fld. warrant of removal of indictment.

1/17/77 - Filed memo end in motion filed 1/13/77 the foregoing motion having been heard is hereby granted by the Court in the absence of opposition. Motion of appeal to be filed by January 31, 1977 so ordered Goettel, J. M/N

1/24/77 - Filed letter from US Atty. to Judge Goettel dated 1/14/77.

1/24/77 - Filed notice of appeal from the judgment of conviction entered 12/22/76 (Mailed notice to defendant and U.S. Attorney)

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

s/J. Finneran

Deputy Clerk



## JUDGMENT AND COMMITMENT

77-063

DEFENDANT

WILLIAM CORTES-RIOS

DOCKET NO.

76 Cr. 867 (GLG)

## JUDGMENT AND PROBATION/COMMITMENT ORDER

CONFIDENTIAL

In the presence of the attorney for the government  
the defendant appeared in person on this dateMONTH DAY YEAR  
December 22, 1976

COUNSEL

☐ WITHOUT COUNSELHowever the court advised defendant of right to counsel and asked whether defendant desired  
have counsel appointed by the court and the defendant thereupon waived assistance of counsel.☒ WITH COUNSEL

Stanley L. Shapiro, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
the plea is a factual basis for the plea,☐ NOT A CONTENDER☐ NOT GUILTY

as charged in counts 1 and 2.

FINDING &  
JUDGMENTThere being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged  
☐ GUILTY.Defendant has been convicted as charged of the offense(s) of **unlawfully, intentionally and  
knowingly did possess with intent to distribute, a Schedule I narcotic  
drug controlled substance. (Title 21, Sections 812, 841(a)(1) and  
841(b)(1)(A), United States Code. (Title 21, Section 846, United  
States Code.)**SENTENCE  
OR  
PROBATION  
ORDERThe court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary  
was shown or appeared to the court, the court adjudged the defendant guilty as charged and considered and ordered that: The defendant  
be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of**TWELVE (12) YEARS on each of counts 1 and 2 to run concurrently with  
each other. Pursuant to the provisions of Section 841 of Title 21,  
United States Code, the defendant is placed on SPECIAL PAROLE for a  
period of THREE (3) YEARS to commence upon expiration of confinement.**

- AND -

SPECIAL  
CONDITIONS  
OF  
PROBATIONDefendant is **FINED \$20,000 on each of counts 1 and 2 to run concurrent  
ly with each other. Fine to be paid or defendant to stand committed  
until the fine is paid or he is otherwise discharged according to law**

Defendant be credited for time already served.

Counts 3 and 4 are dismissed on motion of defendant's counsel with  
the consent of the government.ADDITIONAL  
CONDITIONS  
OF  
PROBATIONIn addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the  
reverse side of this judgment be a part of the conditions of probation. The defendant may change the condition of probation, reduce or extend the period of probation, and a  
may also during the probation period or within a maximum probation period of five years permitted by law, may make a warrant and revoke  
probation for a condition occurring during the probation period.COMMITMENT  
RECOMMEN  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

GERARD L. GOETTEL, U.S.D.J. 12/22/76

CERTIFIED AS A TRUE COPY ON  
THIS DATE 12/22/76

By

( ) CLERK  
( ) DEPUTY

BEST COPY AVAILABLE



NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

-against-

WILLIAM CORTES-RIOS,

Appellant.

NOTICE OF APPEAL

Indictment No. 76 CR 867

Name and Address of Appellant:

William Cortes-Rios  
Inmate, Federal Prison  
Ft. Leavenworth, Kansas

Name and Address of Appellant's  
Attorney:

Stanley L. Shapiro, Esq.  
Shapiro, Somer & Wand  
P.O. Box 128 - 1557 Straight Path  
Wyandanch, New York 11798  
(516) 643-8030

Offense:

Violation of Section 812, 841(a)(1)  
and 841(b)(1)(a) and Conspiracy to  
Violate Title 21, United States Code,  
Sections 812, 841(a)(1) and 841(b)(1)  
(a).

Sentence:

Imposed 12/22/76 -- Twelve years  
imprisonment plus \$20,000. fine on  
each count - sentence to run con-  
currently.

The appellant herein here appeals to the United States  
Court of Appeals for the Second Circuit from the above-stated judgment.

Dated: Suffolk, N.Y.  
January 20, 1977

Yours, etc.

*Stanley L. Shapiro for the firm*  
SHAPIRO, SOMER & WAND

Attorneys for Appellant

Office & P.O. Address:

P.O. Box 128 - 1557 Straight Path  
Wyandanch, New York 11798

(516) 643-8030



INDICTMENT (Pages A6 to A9)

- - - - - X

SAME TITLE

- - - - - X

The Grand Jury charges:

1. From on or about the 1st day of October, 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, WILLIAM CORTES-RIOS, the defendant, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendant unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about July, 1974, WILLIAM CORTES-RIOS,

the defendant, delivered a package containing a quarter kilogram of heroin to co-conspirators Benito Cruz a/k/a Nino, Jose Rivera a/k/a Rico, and Tony Hernandez in the vicinity of 17th Street between 6th and 7th Avenues in Manhattan.

2. In or about July, 1974 WILLIAM CORTES-RIOS, the defendant, took an airplane flight from New York City to Los Angeles, California.

3. In or about July, 1974, WILLIAM CORTES-RIOS, the defendant, met with co-conspirator Fernando Gallardo in the vicinity of Slugger Ann's Tavern at 192 Second Avenue, New York, New York.

4. In or about August, 1974, WILLIAM CORTES-RIOS, the defendant, met with co-conspirator Herminio Gutierrez a/k/a Cuba, at the home of co-conspirators Fernando Gallardo and Martha Machado in Rexville, Puerto Rico.

5. In or about September, 1974, WILLIAM CORTES-RIOS, the defendant, met with co-conspirator Hector Ramos-Irribe in Monterey Park, California and purchased approximately three kilograms of heroin.

6. In or about November, 1974, co-conspirator Fernando Gallardo registered in the Biltmore Hotel in Los Angeles, California under the name of Frank Zayas.

7. In or about November, 1974 co-conspirator Fernando Gallardo met co-conspirators Fernando Valenzuela and Hector Ramos-Irribe in Los Angeles, California.

8. In or about November, 1974, co-conspirator



Fernando Gallardo registered in the George Washington Hotel in Manhattan under the name of Frank Zayas.

9. In or about November, 1974, WILLIAM CORTES-RIOS, the defendant, and co-conspirators Fernando Gallardo and Martha Machado met in the vicinity of Slugger Ann's Tavern in Manhattan and discussed plans for the distribution on brown Mexican rock heroin purchased in Los Angeles.

10. In or about November, 1974 co-conspirator Herminio Gutierrez a/k/a Cuba, went to the apartment of co-conspirator Francisco Machado located on East 12th Street in Manhattan near Slugger Ann's Tavern.

11. In or about January, 1975, co-conspirators Fernando Gallardo and Benito Cruz a/k/a Nino, met in an apartment on East 3rd Street in Manhattan.

(Title 21, United States Code, Section 846)

COUNT TWO

The Grand Jury further charges:

In or about June, 1974, in the Southern District of New York, WILLIAM CORTES-RIOS, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately a quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)).

COUNT THREE

The Grand Jury further charges:

In or about July, 1974, in the Southern District of New York, WILLIAM CORTES-RIOS, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately a quarter kilogram of heroin.

(Title 21, United States Code, Sections 812  
841 (a) (1) and 841(b) (1) (A) .)

COUNT FOUR

The Grand Jury further charges:

In or about August, 1974, in the Southern District of New York, WILLIAM CORTES RIOS, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately three kilograms of heroin.

(Title 21, United States Code, Sections 812,  
841(a) (1) and 841(b) (1) (A) .)

.....  
ROBERT B. FISKE, JR.  
United States Attorney

.....  
FOREMAN



MINUTES OF NOVEMBER 5th, 1976 (Pages A10 to A30)

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA, :

5 vs. :

6 WILLIAM CORTES RIOS, :

7 Defendant. :

76 Cr. 867

8  
9 BEFORE: HON. GERARD L. GOETTEL, D. J.

10 November 5, 1976  
11 12:45 P. M. - Room 906

12  
13 APPEARANCES:

14 ROBERT B. FISKE, JR., ESQ.,  
15 United States Attorney  
16 For the Government

17 BY: DON BUCHWALD, ESQ.,  
18 Assistant United States Attorney

19 STANLEY L. SHAPIRO, ESQ.,  
20 For the defendant.

21 MISS GRACIELLA LANUS,  
22 Interpreter.

1 arcg

(Case called.)

2 MR. BUCHWALD: The government is ready.

3 MR. SHAPIRO: Ready for the defendant.

4 THE COURT: Will you swear the interpreter,

5  
6 please.

7 (Graciella Lanus, the Interpreter was sworn by  
8 the Clerk.)

9 MR. SHAPIRO: Your Honor, at this time the  
10 defendant, William Cortes Rios, respectfully wishes to  
11 withdraw his previously entered plea of not guilty to  
12 indictment 76 Cr. 867 and plead guilty under the first and  
13 second counts of the indictment in satisfaction of the  
14 entire indictment.

15 THE COURT: Is that arrangement agreeable to the  
16 government?

17 MR. BUCHWALD: Yes, your Honor.

18 The agreement between counsel and Mr. Rios and  
19 myself is as follows: That Mr. Rios if he enters a plea  
20 of guilty to counts 1 and 2 of the indictment and if he  
21 further admits in open court his participation and culpa-  
22 bility at that time to count 4 of the indictment, that the  
23 government at the time of sentencing will move to dismiss the  
24 open counts, namely 3 and 4 of the indictment.

25 The only other aspect of the agreement is that

All



1 arcg

2 the government will bring to the attention of the sentencing  
3 judge and any other appropriate sentencing authorities,  
4 be it as to Rule 35 motions or statements to parole boards,  
5 any cooperation which Mr. Rios offers to the government,  
6 if such cooperation occurs.

7 That is the extent of the agreement and I would  
8 ask counsel to verify that.

9 MR. SHAPIRO: That is correct, your Honor.

10 Has the defendant's first step toward rehabili-  
11 tation and admitting what he has done, I would like to hand  
12 to the court a signed copy of a statement of confession  
13 which I took from the defendant and submitted to the United  
14 States Attorney.

15 Your Honor, this is basically what the defendant  
16 said in our interview with him. There may be further in-  
17 formation which he can supply to the United States Attorney  
18 but I have informed him that is up to him and whether or  
19 not the extent of cooperation of cross will be considered  
20 by the United States Attorney and made known to the Court.  
21 But this is at least the first step.

22 THE COURT: All right.

23 EXAMINATION BY

24 THE COURT:

25 Q (Through the interpreter) Will you state your



1 arcg

2 name, please?

3 A William Cortes Rios.

4 Q How old are you?

5 A 38.

6 Q What is the extent of your education?

7 A Third high school year.

8 Q Are you currently or have you recently been under  
9 the care of a physician or psychiatrist?

10 A No, sir.

11 Q Have you ever been hospitalized or treated for  
12 narcotics addiction?

13 A I was hospitalized, not because of drug use  
14 but because I had been sick.

15 Q When was that?

16 A In 1970 I was in Kingsbridge Hospital because  
17 I had to go in to be treated for an operation about a wound  
18 I got in Vietnam -- in Korea, not Vietnam.

19 Q How do you feel today?

20 A My health is good.

21 Q You have received a copy of the indictment?

22 A Yes.

23 Q Have you had adequate time to consult with your  
24 attorney?

25 A Yes.

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Q Do you wish the indictment read at this time or will you waive the reading of the indictment?

A We've been over that so it is all right.

Q It is not necessary to read it?

A Not necessary.

Q I will tell you and I am sure that you know the first count of the indictment charges you with conspiracy to distribute narcotics.

The second count of the indictment charges that in June 1974 you possessed a quarter kilogram of heroin and the fourth count, which I understand you are not pleading to be as to which you are going to admit certain facts, charges that in August of 1974 you possessed three kilograms of heroin.

MR. SHAPIRO: As to the fourth count the defendant will admit, as he has in his statement to the court, that he took a trip with another person to California and came back with a quantity of heroin but did not know the amount thereof.

THE COURT: I understand.

MR. BUCHWALD: With respect to counts 2 and 4 the charge is not possession but possession with intent to distribute.

THE COURT: Yes, I will amend it.



1 arcq

2 Q In substance counts 2 and 4 charge you not only  
3 with possession but also of possession with intent to  
4 distribute and distributions.

5 Are you ready to plead at this time to counts  
6 1 and 2?

7 A Yes.

8 MR. SHAPIRO: Your Honor, prior to the defendants'  
9 plea I would like to inform the Court that I have communi-  
10 cated with the defendant about this plea at great length.  
11 I have gone over the 3500 material which was furnished to  
12 me with the defendant and I should represent to the Court, al-  
13 though I am not fluent in Spanish, I speak enough Spanish to  
14 communicate with the defendant and the defendant spoke  
15 enough English that we did not have any communication  
16 problem.

17 THE COURT: I am going to ask you about that in  
18 due course.

19 BY THE COURT:

20 Q What is your plea to counts 1 and 2?

21 A Guilty.

22 Q Before I can accept such a plea it is necessary  
23 for me to find that you are acting voluntarily, that you  
24 fully understand your rights, that you fully understand the  
25 consequences of your plea and that you are in fact guilty?

1 arcq

2 A Yes, sir.

3 Q Do you understand that I cannot accept your  
4 plea until I am satisfied of your guilt and you understand  
5 your rights?

6 A Yes.

7 Q If you plead not guilty you would be entitled  
8 to a speedy public trial by a judge or jury and at that  
9 trial you would be able to confront witnesses upon whose  
10 testimony the government relies in order to obtain your  
11 conviction.

12 You would have the right to cross-examine these  
13 witnesses, and at this trial you would be presumed innocent  
14 until such time, if ever, that the government establishes  
15 your guilty by competent evidence to the satisfaction of  
16 the judge or jury beyond a reasonable doubt.

17 And you would be entitled to the compulsory  
18 processes to call witnesses on your own behalf.

19 Do you understand all of that?

20 A Yes, sir.

21 Q By entering this plea you are giving up that  
22 right you have to such a trial, is that clear to you?

23 A Yes, sir.

24 Q The essential elements of the charges against  
25 you are that you conspired with others to possess a schedule



1 arcg

2 1 narcotic control substance and that on the two occasions  
3 I mentioned -- on the occasion I mentioned to you of June  
4 of 1974, you did distribute and possess with intent to  
5 distribute a schedule one narcotic control substance, to  
6 wit, approximately a quarter kilogram of heroin.

7 The maximum penalties for these offenses are  
8 as to the conspiracy 15 years and/or a \$25,000 fine and a  
9 three year special parole.

10 As to the second count, the possession count,  
11 the penalties are the same. The penalties, however, can  
12 be consecutive and you can be sentenced separately under  
13 each charge.

14 You heard the statement made earlier by your  
15 attorney and by the assistant United States attorney con-  
16 cerning certain agreements that have been with respect to  
17 the entering of this plea.

18 Besides those agreements and promises, have there  
19 been any other promises made to induce you to plead guilty?

20 A No, sir.

21 Q Have any threats been made to induce you to  
22 plead guilty?

23 A No, sir.

24 Q You have been advised by your attorney that  
25 because of your cooperation it is hoped that you will get a

1 arct

2 lesser sentence. Do you understand, however, that I am not  
3 bound by your attorney's belief and that I must do ultimately  
4 what appears just under the circumstances?

5 A Yes, sir.

6 Q You have submitted to me a statement which is  
7 seven pages in length which concerns your involvement in the  
8 charges against you and your understanding of your rights.

9 Is this your signature at the bottom?

10 A Yes, sir.

11 Q Did you sign this today?

12 THE COURT: Mr. Shapiro, was also witnessed by  
13 you and is that your signature?

14 MR. SHAPIRO: That is correct.

15 THE COURT: I will direct that the clerk mark  
16 this as Court Exhibit 1.

17 (Court Exhibit 1 marked.)

18 MR. SHAPIRO: I ask that Court Exhibit 1 be sealed.

19 THE COURT: It will be.

20 MR. SHAPIRO: Thank you.

21 THE COURT: I direct the clerk to seal the  
22 exhibit.

23 Q Does this statement, seven pages long, truly  
24 state the facts involved in this case?

25 A The truth and only the truth.



1 arcg

2 Q Did you do all of those acts and do you know all  
3 of the things recited in the seven page statement?

4 A Yes, sir.

5 Q Did you in fact conspire to possess with intent  
6 to distribute a schedule 1 narcotic drug control substance  
7 and did you in or about June of 1974 in fact possess a  
8 quarter kilogram approximately of heroin?

9 A Yes, sir.

10 Q Knowing all of the things that I have just told  
11 you and understanding all that I have just said to you, is  
12 it still your wish to plead guilty?

13 A Yes, sir.

14 THE COURT: Are there any additional questions  
15 which the United States Attorney's office would like to  
16 direct to the defendant at this time?

17 MR. BUCHWALD: Your Honor, I believe it would be  
18 appropriate, notwithstanding the submission of Court Exhibit  
19 1, for the defendant to state in his own words and to provide  
20 a factual basis on the record above and beyond the statement.

21 MR. SHAPIRO: If the Court requires it the defense  
22 has no objection. However, I ask that we clear the court-  
23 room if the defendant does so.

24 THE COURT: I am not going to go over the entire  
25 contents of that 7-page statement.



1 arcq

2 MR. BUCHWALD: Your Honor, we would not ask that  
3 you do that and, your Honor, it is not our position that the  
4 defendant has completely indicated the extent of his know-  
5 ledge or participation in the 7-page statement.

6 We do believe, however, that he ought to at least  
7 state the basics of the conspiracy, some of the people he  
8 was involved with, what his role was within the conspiracy  
9 and the he ought to indicate to whom he distributed the  
10 quarter kilo of heroin and at whose behest in June of 1974.  
11 The statement is not particularly detailed.

12 THE COURT: I think it is quite detailed but it  
13 doesn't necessarily go to what you are interested in.

14 MR. SHAPIRO: Well, your Honor, I think for  
15 purposes of the plea, which is all we are here for today,  
16 that the statement certainly incriminates him to the point  
17 where it shows his involvement, at least in those two trans-  
18 actions to which he plead guilty, number one, the conspiracy  
19 and, number two, the possession with intent to distribute.

20 I feel that this should be satisfactory to the  
21 Court. However, if the Court requires more I would ask just  
22 to have the courtroom cleared.

23 MR. BUCHWALD: Your Honor, I believe there is a  
24 factual basis set forth in the statement. It is because of  
25 what we view as the high importance of this case, and in



1 arg

2 view of some of the decisions in the Second Circuit in  
3 interpreting what is necessary that I am making this a ques-  
4 tion. It may be redundant.

5 THE COURT: I think it is an undue caution.  
6 However, the time involved, I guess we will not lose much.  
7 We will clear the courtroom.

8 MR. BUCHWALD: Your Honor, we would object to  
9 clearing the courtroom. There are some agents here. We are  
10 not aware of any reason why this --

11 THE COURT: Do you have any objection to the  
12 government agents?

13 MR. SHAPIRO: The government agents I have no  
14 objection. I just don't want any strangers here.

15 THE COURT: All right.

16 (Pause.)

17 THE COURT: We have now cleared the court of  
18 everyone except the government agents and the attorneys and  
19 the other court personnel.

20 MR. BUCHWALD: Special Agent Moekler and Police  
21 Officer McHale of Group A of the Task Force.

22 THE COURT: The clerk has inspected their creden-  
23 tials.

24 BY THE COURT:

25 Q Mr. Rios, with respect to this incident in June

1 arcg

2 of 1974 when you possessed with intent to distribute a  
3 schedule 1 narcotic drug substance, to wit, approximately a  
4 quarter kilogram of heroin, tell me what happened at that  
5 time.

6 MR. SHAPIRO: I gave him the name of the person  
7 just to refresh his recollection.

8 A I was given this package so I would give it to  
9 Nino and a guy I knew by the name of Nino, but his name is  
10 Benito Cruz.

11 Q Who gave you the package?

12 A A guy known as Jumaredo.

13 Q Where did he give it to you?

14 A First Avenue and 15th here in New York.

15 Q What did you do with it after you got it?

16 A I took it to Nino at 17th.

17 Q 17th Street in Manhattan?

18 A 17th Street, yes.

19 Q What did the package contain?

20 A I imagine it contained drugs because it was given  
21 to me and I gave it to the other guy.

22 Q Did the person who gave it to you tell you what  
23 it contained?

24 A Well, it was known what was inside the package and  
25 it was that.



1 arcq

14

2 Q How did you know?

3 A I was told that . . . to deliver that package  
4 and what that package was going to contain but I didn't see  
5 it.

6 Q What were you told it contained?

7 A Well, drugs.

8 Q Did you receive any money for the package when  
9 you delivered it?

10 A No.

11 THE COURT: What other questions do you want to  
12 ask of Mr. Buchwald?

13 MR. BUCHWALD: More specifically was Mr. Rios  
14 aware of the fact that the contents of the package was  
15 heroin?

16 A I knew because I was told that that package I  
17 had to deliver contained drugs but I never opened it. I  
18 never saw it.

19 Q Did the person who gave you the package tell you  
20 that it was heroin to your knowledge?

21 A I cannot tell you. Only that he delivered it to  
22 me.

23 MR. SHAPIRO: May I ask a question which might  
24 clear it up for Mr. Buchwald?

1 ARCG

15

2 BY MR. SHAPIRO:

3 Q Who was the person who told you that this package  
4 would have drugs in it?

5 A Carlos.

6 Q Carlos who?

7 A Gallardo.

8 Q Who is Carlos Gallardo?

9 A It is the brother of Fernando Gallardo.

10 MR. BUCHWALD: Did you understand that Carlos  
11 and Fernando Gallardo worked together?

12 A Well, they are brothers.

13 BY MR. SHAPIRO:

14 Q Did there come a time when you later learned that  
15 Fernando Gallardo was the head of this drug ring?

16 A Later.

17 Q When was this and where was that?

18 A In Puerto Rico I found out once that we were  
19 talking among us that he was the head. I always thought it  
20 was Nino.

21 Q And in furtherance -- after you found out that  
22 Fernando Gallardo was the head of the drug ring did you take  
23 trips for Fernando Gallardo. One to California with Fernando  
24 and one at a later time with Ramon Rivera at Fernando's  
25 request?

A24



2 A I did one trip with Fernando and one later with  
3 Ramon Rivera.

4 Q On this trip with Ramon Rivera was that when you  
5 brought back some drugs from California, is that correct?

6 A Yes.

7 Q That was the charge in count 4 of the indictment,  
8 correct?

9 A Yes.

10 Q Did you know how much drugs you brought back,  
11 whatever the quantity of drugs you brought back when you came  
12 back with Ramon.

13 A Not exactly but there were several packages.

14 MR. BUCHWALD: I believe that is sufficient for a  
15 factual basis for me.

16 THE COURT: Do you represent that the government  
17 has adequate evidence to obtain a conviction?

18 MR. BUCHWALD: I do so represent, your Honor.  
19 The government would be prepared to present five accomplice  
20 witnesses, at least five, who would testify to Mr. Rios'  
21 involvement in the Gallardo heroin organization and more  
22 specifically to the substantive count set forth in the  
23 indictment as well as Mr. Rios' position within the organiza-  
24 tion, the laundering process of the operation in Puerto Rico  
25 and taking trips to California and introducing other agents of

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17

2 the organization to customers of the organization in New York.

3 THE COURT: The statement before me contains a  
4 wealth of information concerning the activities of the con-  
5 spiracy. Does the defense counsel know of any reason why  
6 the defendant should not plead guilty?

7 MR. SHAPIRO: Your Honor, I have fully examined  
8 the 3500 material furnished to me which I have taken posses-  
9 sion of plus additional 3500 material which was shown to me  
10 by Mr. Buchwald.

11 After seeing this material and evaluating it and  
12 doing a thorough research job and examining the statutes I  
13 feel the government would prove its case beyond a reasonable  
14 doubt.

15 THE COURT: Under these circumstances I accept  
16 the plea of guilty to counts 1 and 2.

17 We will obtain a pre-sentence report and the  
18 sentencing will be set for December 29 at 9:30 a. m. in  
19 room 906.

20 MR. SHAPIRO: I believe I will be out of the  
21 country that week.

22 THE COURT: Would you like to have it moved back  
23 or forward?

24 MR. SHAPIRO: At the convenience of the Court,  
25 forward would be just as well. I hoped to take two weeks



1 arcg

2 off at the end of December. We don't have firm plans but I  
3 think I blocked from December 23 through the 1st of the year.

4 THE COURT: I will put it down for December 22  
5 then at 9:30 in this courtroom.

6 Is there anything else?

7 MR. SHAPIRO: I would like the record to indicate  
8 that I am returning the 3500 material to Mr. Buchwald and,  
9 secondly, your Honor, I have a request of the Court.

10 Mr. Rios has informed me that he just learned his  
11 father has suffered a heart attack. His father is in  
12 Wycoff Heights Hospital in Brooklyn.

13 Being that this defendant is facing a very--  
14 well almost definitely a mandatory jail term of some extent,  
15 and potentially facing up to 30 years in jail, I would ask  
16 that this Court in view of his father's age and his father's  
17 health, to direct that the United States marshals transport  
18 him to Wycoff Hospital on a special visit to spend a few  
19 moments with his father and make his peace with his father  
20 and then return to jail.

21 MR. BUCHWALD: Your Honor, the government opposed  
22 that application. Mr. Rios is being held on \$1,000,000  
23 bail, bail set for good and sufficient reason and a bail  
24 which we hope will continue.

25 Mr. Rios has other relatives here in New York City

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2 area, including a brother I believe by the name of Jose and  
3 a sister-in-law named Nunez who would be in a position to  
4 visit Mr. Rios' father.

5 We believe that to have Mr. Rios transported by  
6 the marshals would create a tremendous security risk, would  
7 impose a tremendous burden on the marshals and, under the  
8 circumstances, that burden should not be imposed.

9 It would seem inconceivable to me that Mr. Rios'  
10 father's condition would be improved by having Mr. Rios and  
11 four or five marshals in the hospital room.

12 THE COURT: I am sure Mr. Rios' own peace of mind  
13 would be improved by the visit.

14 MR. BUCHWALD: I believe it would be and it is  
15 not lightly that I oppose the application of this type.  
16 It does impose a tremendous burden in a case of this type.

17 THE COURT: I understand that, but when somebody  
18 is dying it is an unusual circumstance and you represent,  
19 counsel, that the man is in serious condition?

20 MR. SHAPIRO: I have not checked this out myself.  
21 I can check it out and certainly will inform the Court of the  
22 condition of the man.

23 However, I have absolutely no objection to the  
24 Court or its office making the call to determine the serious-  
25 ness.



1 arcg

2 Is your father in critical condition? What is  
3 his condition?

4 THE DEFENDANT: He is on intensive care.

5 THE COURT: If he is in intensive care he is in  
6 serious condition. What is the hospital?

7 MR. SHAPIRO: Wycoff Heights. The name is  
8 Jasinto Cortes and Wycoff Heights Hospital, telephone number  
9 963-7272.

10 THE COURT: Would you like to check first, Mr.  
11 Buchwald, before I do anything about it?

12 MR. BUCHWALD: I gather that your Honor is indicat-  
13 ing that you are tentatively disposed to granting the  
14 application?

15 THE COURT: Yes. I will allow your agents to go  
16 with him however.

17 MR. BUCHWALD: We would wish to check it out furthe  
18 I take it that intensive care, while it is serious is  
19 different from critical condition.

20 THE COURT: No, intensive care is where they put  
21 the sickest patient and there is nothing more serious in terms  
22 of confinement than intensive care.

23 MR. BUCHWALD: We would like the opportunity to  
24 confirm it.

25 THE COURT: All right, confirm it. But as soon as

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2 you do that I will direct the marshals and if you like in  
3 custody of all your agents, to take the defendant to the  
4 hospital to visit with his father.

5 MR. SHAPIRO: Thank you, Judge.

6 ---



STATEMENT BY DEFENDANT (Pages A31 to A37)

My name is William Cortes-Rios. I am 38 years of age having been born on April 9, 1938. I am making this statement in the presence of my attorney, Stanley L. Shapiro, Esq., who with my permission will sign at the end of this statement as a witness.

Mr. Shapiro has advised me that I am charged with one count of conspiracy to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code. He further advised me that I am also charged with three separate substantive counts under the sections mentioned above.

Mr. Shapiro has advised me that each of the four charges against me carry a maximum penalty of fifteen years each and/or a \$25,000 fine on each count.

In order to minimize my exposure and to clear my own conscience I have advised Mr. Shapiro to enter a guilty plea on my behalf to the conspiracy count and one substantive count of the indictment. Mr. Shapiro further advised me that I also must admit to my involvement in the remaining counts although they will be dismissed by the Government at the time that I take my plea.

Mr. Shapiro has advised me that a plea of guilty is the same as a conviction after trial. I understand that by pleading guilty I am waiving my right to a trial and to be confronted by the witnesses against me and to have them cross-examined by my attorney. I am pleading guilty because I am guilty. I now state that there have been no threats made against me to induce my plea of guilty and no promises made to me by anyone as to what sentence I will receive.

My attorney did advise me that if I cooperate with the United States Attorney's office that the extent of my cooperation and the value of my cooperation will be made known to the sentencing judge at the time of sentence or at the time a Rule 35 motion is made.

Mr. Shapiro has advised me that because I cooperate with the United States Attorney, it is not a guarantee that I will receive a lesser sentence or have my sentence reduced, but that in Mr. Shapiro's experience that complete cooperation is usually considered favorably at the time of sentence or at the time a Rule 35 motion is made.

I do hereby now freely and voluntarily admit to the following:



I first met Carlos Gallardo about 1973 through Raymond Rivera. I was working for the Clinton Travel Agency, 91 Clinton Street, New York City. The agency was owned by Rojello Albaje. My job was to go to the Motor Vehicle Bureau on Worth Street to register motor vehicles, obtain registrations, obtain license plates, etc.

Raymond Rivera did the same job as I did, but he worked for the 14th Street Travel Agency which was located at 14th Street between Second and Third Avenues.

I have known Raymond Rivera since 1968 and I am the godfather of his son William who is about 4 years old.

I would meet with Raymond just about every day and we would go to the Motor Vehicle Bureau together. Carlos Gallardo was a customer of Raymond's. When Raymond went to jail in 1973 (Rikers Island), I handled his customers for him. One of his customers was Carlos Gallardo. In return for his customers, I would help his family by giving them money to help them support themselves while Raymond was in jail.

I met Fernando Gallardo in 1974 at the new agency Albaje opened on Avenue B between 11th and 12th Street. Carlos Gallardo brought Fernando Gallardo to me to buy insurance for a car. He came to me because at that time it usually took three or four days to get an FS-1 form and I was usually able to get it in one day. I believe Raymond knew Fernando Gallardo since he had many dealings with his brother.

When Raymond was released from jail, he immediately started to deal in drugs on a small scale. Raymond approached me and asked me to be his partner which I refused to do at this time.

I state now that I did not have anything to do with drugs up to this time. My 1971 arrest for possession of cocaine was dismissed when the Court learned that I was driving a passenger to the airport for my boss and when the car was stopped, the passenger had cocaine on him.

Carlos Gallardo came to me about the beginning of 1974 because he knew of my involvement with Raymond Rivera in registering stolen automobiles and obtaining driver's licenses through fraudulent practices. The charges against me were dismissed for lack of evidence.



During our conversation I learned that Carlos was Raymond's source for heroin. Carlos told me that he knew a guy who could get heroin and would I be interested in dealing some. I agreed to do it and a guy named Pumarero brought me a cellophane package on credit and I started dealing in small quantities to people Carlos sent to me. Carlos introduced me to these people before I received the heroin. The people who I gave the heroin to were named "Lopez", "White Tony" and "Pacito". Pacito was Martha Machado's brother.

The first package given to me by Pumarero was about eight ounces. I received about \$12,000 for the heroin and gave Carlos \$10,000 of that money. The heroin was sold at \$1,500 an ounce. On this deal I made a profit of \$2,000.

I then received a second package from Pumarero about a week later. It took me about 10 days to effect the second delivery to the same three people. Again, I made about a \$2,000 profit.

I received a third package from Pumarero about May of 1974. Carlos Gallardo told me to deliver the entire package to Nino (Benito Cruz) at the maintenance store. Rico Rivera and Nino were present when I made the delivery but I do not remember anyone else being there. I emphatically state that I did not make a second delivery to Nino. I only received the three packages that I mentioned and only made a total profit of about \$6,000. I then went to Puerto Rico.

About June or July 1974 I went to visit Fernando Gallardo in Bayamon, Puerto Rico. I told him that I was looking for a house near Bayamon and he told me about a house near where he lived. My brother and I split the cost of the house which was \$14,000. We paid cash for the house. My share of the cash came from the profits that I made from registering stolen vehicles and selling driver's licenses not from drugs.

I had a partnership with a man named Caesar. Raymond Rivera had the same deal with him. Caesar and his brother were found guilty but the case against me was dropped for lack of evidence. The way this worked was I would find a customer who I would charge \$250 for the license. I would bring the customer to Caesar at a white van that was parked near the Motor Vehicle Bureau. I would give Caesar \$50 and pocket \$200. Caesar would give the customer a form that showed that he passed the written test and had turned in an out of state license. The customer would then enter the Motor Vehicle Bureau and pay his fee and pick up his license.



I then moved to Bayamon and Fernando Gallardo and I became good friends.

From our conversations I believed Fernando was also into drugs, but I did not know he was the boss. I believed that Nino was the top man. Later Fernando told me that he was the top man and Nino worked for him.

About this time I overheard an argument between Fernando and Nino. Nino was saying that he was the one who introduced Fernando to California. At the time of the argument I don't remember if others were present.

Approximately in June of 1974 Fernando asked me to go to California with him to meet a guy who was giving him drugs. I know that Fernando had a lot of money with him. We met a guy who I believe was named Hector. He had long black hair and looked Mexican. I believe I could identify his photograph. This guy took the suitcase with the money in it and came back later and gave the suitcase to Fernando. Fernando and I came back to New York and went to an apartment on 5th Street and Avenue D. Fernando opened the suitcase and I saw four packages of about eight ounces each containing brown rock heroin. Only Fernando and I were present. We took the tape off the packages and put the contents into cellophane. Fernando paid all of my expenses for the trip and gave me \$600 for myself.

He then discussed another trip to California which he wanted me to take for him. I told him that I was afraid to go alone.

I returned to Puerto Rico and found Raymond Rivera. I asked Raymond to go with me and he said yes.

I brought Raymond to Gallardo's home. Raymond, Fernando and I went into the back room to discuss business. In the house was Martha Machado and members of the Machado family. I know Cuba was not there that day. At this meeting we agreed that Raymond would handle the deal and I would just go along to introduce him so he could make all of the future trips.

In August of 1974 Raymond and I went from Puerto Rico to New York. We then went to Pennsylvania to buy my station wagon and then we returned to New York. While in New York I stayed with my cousin Julian in my mother's old apartment. I believe that Raymond went to his girlfriend's family el barrio.



We went from New York to California to meet Hector. We took a taxi from the airport to Monterey to a motel. I believe it was the Garvey Motel. We met Hector who I introduced to Raymond. Raymond gave him the suitcase and he brought it back about 1 1/2 hour later. Raymond and I looked at the contents of the suitcase and I saw six or seven packages that were taped the same way I had seen them before. I did not test the packages or open them up. The next morning we flew to New York and went to meet Fernando Gallardo who was playing handball on 10th Street. Raymond had the suitcase. Fernando told me to introduce Raymond to the customers Nino, White Tony, Lopez and Pacito. Raymond already knew Pacito so I introduced him to the others.

I returned to Puerto Rico. I remained there through Christmas. Raymond was there with me. At the end of 1974 or the beginning of 1975 Raymond asked me to introduce him to the bankers. I did so and in my presence he purchased two \$50,000 certificates of deposit. I knew the banker because I had previous dealings with him and I became friendly with him. I believe that my friendship with the banker made it easier for Raymond to get the certificates of deposit.

I returned to New York when I received a telephone call from Martha Machado's brother. I think it was from Pacito but I am not sure now. He told me Fernando was arrested would I come to New York to help.

I came to New York and met with Martha Machado. I told her that I knew a good lawyer who Raymond Rivera had introduced me to - Jeffrey Weingard. Martha and I went to Mr. Weingard's office. I introduced Martha to Mr. Weingard and I waited outside in the waiting room while they talked.

I helped Fernando raise his bail money. I went to a lady in East New York (Brooklyn) on the recommendation of a guy named Willie who owned a store on Third Street. This woman gave me a check for \$10,000. My brother Jose gave me \$7,000 from his bank account.

These were the only people that I contacted. Fernando got out on bail, paid the bail money back to this woman and my brother and then jumped bail.

I then back to Puerto Rico and did not have any further business contacts with Fernando. I was in telephone touch with him



and came to New York three or four times to find out whether he involved me in any way. I stopped coming to New York because Mr. Weingard told me if you are afraid of the heat get out of the kitchen.

Raymond tried to hire a lawyer from Brooklyn to replace Mr. Weingard. Raymond said Mr. Weingard is a straight lawyer and we needed someone who could take care of the case. Raymond and I went to see the lawyer in Brooklyn. Raymond paid him some money but Fernando said no. He wanted Mr. Weingard.

About June 12, 1976 Raymond visited me in my restaurant. He told me that he was going to do some time in Puerto Rico because of a drug case. I told him that I would help him by sending some money to his wife and kids while he was in jail. Raymond said ok.

He came back a few days later with a paper showing that he had mortgaged his house for \$7,000. He asked me for the money but I told him I didn't have it. He asked me if I could get some people to help him. I told him yes I would try but I really didn't because Raymond and I were having some problems which I will discuss later.

A fellow named Tito came into my bar. Tito was a friend of Raymond's and I mentioned it to him but he said Raymond was trouble and didn't want to help him.

When Raymond telephone me I told him I would try to speak with Tito although I already had and knew his answer. This was to get Raymond off my back.

About this time Raymond had told me that Big Joe was looking for me. I was introduced to Big Joe's wife while Big Joe was in jail by Raymond. Raymond can tell you who Big Joe is.

The problem I had with Raymond came about the time Fernando was waiting for trial. Raymond told Fernando that I was **shacking up with Raymond's girlfriend in Puerto Rico** and that he was going to blow me away. Fernando telephoned me and I came to New York to straighten out the problem with Raymond. Our relationship was never the same after that.

I believe that Raymond Rivera was responsible for the arrest of Luis Nunez who was supposed to have sold Raymond cocaine on July 5, 1976. I know that Luis was not in Puerto Rico on that date. Raymond had a fight with Luis and said he was going to get him.

In 1975 and early 1976 Martha Machado's brother Tonio was living at my house. He also used my telephone when he lived at Fernando's house.



I also heard Fernando Gallardo mention the names  
Imdio who was supposed to be a hold-up man and Renee who was in  
drugs.

To the best of my recollection this is a complete  
statement of my involvement and knowledge. I am willing to undergo  
a lie detector test, truth serum or hypnosis to show that I am telling  
the truth.

Dated: New York, N.Y.  
November 5, 1976

S/ William Cortes-Rios  
William Cortes-Rios

Witness:

S/ Stanley L. Shapiro  
Stanley L. Shapiro



TRANSCRIPT RECORD OF PROCEEDINGS DATED 12/22/76 (Pages  
A38 to A48)

bsbr 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
UNITED STATES OF AMERICA, :  
v. : 76 Cr. 867  
WILLIAM CORTES-RIOS, :  
Defendant. :

----- x  
Before:

HON. GERARD L. GOETTEL,  
District Judge

New York, December 22, 1976  
10:00 a.m.

APPEARANCES

ROBERT B. FISKE, JR., Esq.,  
United States Attorney for the  
Southern District of New York,  
By: DON BUCHWALD, Esq.,  
Assistant United States Attorney

STANLEY L. SHAPIRO, Esq.,  
Attorney for Defendant

Also present:

Samuel alfonso, Interpreter

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A38



1 bsbr 2

2 (Case called.)

3 MR.BUCHWALD: Government ready.

4 MR. SHAPIRO: Ready for the defendant.

5 THE COURT: Defendant present?

6 MR. SHAPIRO: Yes, your Honor, defendant is.

7 THE COURT: Is there any reason why sentence should  
8 not be passed at this time?

9 MR. SHAPIRO: There is no legal cause, your  
10 Honor.

11 THE COURT: Swear in the interpreter.

12 (Samuel Alfonso was sworn by the Clerk of  
13 the Court .)

14 THE COURT: Does the defendant know of any  
15 reason why sentence should not be passed at this time?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Does defense counsel know of any rea-  
18 son why sentence should not be passed at this time?

19 MR.SHAPIRO: No, your Honor.

20 THE COURT: Do you have anything you wish to say  
21 in mitigation of sentence?

22 MR.SHAPIRO: Yes, your Honor.

23 Very briefly, your Honor has a full sentence  
24 report.

25 THE COURT: Have you had an opportunity to



1 bsbr 3

2 review it?

3 MR. SHAPIRO: Yes, I have, I reviewed it this  
4 morning, your Honor, while not wanting to go into the  
5 circumstances of the report, the one point I do want to  
6 bring out to your Honor is the defense not permitting  
7 probation to see the signed statement to the court.  
8 I don't want that to be interpreted as any way of our  
9 trying to hide something from the probation department.

10 THE COURT: I understand. I think it  
11 was quite proper that the statement was kept as it was.  
12 The United States Attorney's office was present when it  
13 was made and has seen it, and I don't think it has any  
14 probation impact.

15 However, I would say probably your crucial  
16 point of dispute in your probation report, your pre-  
17 sentence report, is the degree of cooperation afforded by  
18 the defendant and I assume you are going to argue that the  
19 statement itself have some value and therefore the pro-  
20 bation department was unduly harsh on the defendant in  
21 saying that he had given the government no valuable  
22 cooperation to date.

23 MR. SHAPIRO: That is true, your Honor.

24 Furthermore, your Honor, this defendant  
25 had admitted his total involvement with this incident.



1 bsbr 4

2 The government feels that there is more, but I feel that this  
3 is a feel on their part rather than based on some actual  
4 knowledge.

5 The defendant did acknowledge, in addition to  
6 the statement, his dealings with the changing of money.  
7 However, I would ask your Honor to look at the period of time  
8 of this defendant's involvement and the type of involvement  
9 which he was involved in.

10 First of all, the delivery to Ninio,  
11 which he pled guilty under the count, under Count 1, was  
12 a -- that of a courier or low level runner rather than  
13 "the right hand of the Gallardo organization outside  
14 the family."

15 The relationship to Calif with Raymond Rivera  
16 was again to introduce Raymond to someone who he had met so  
17 that he could get out of doing that aspect of the business.

18 Aside from these two trips, the defendant  
19 does not admit to anything further to do with the actual  
20 touching or dealing with narcotics.

21 In addition to that, your Honor, the conspiracy  
22 charge, as the Court well knows, is really an overlapping  
23 charge for these two acts per se.

24 They are encompassed within the conspiracy  
25 charge per se.



1 bsbr 5

2 In no way do I intend to minimize the dealing  
3 in heroin in the United States nor the impact it could have  
4 on the people. And I don't think the defendant is attempt-  
5 ing to do that either. He has been wrong. He has admitted  
6 his wrong. He has attempted, to the best of his ability,  
7 to cooperate, and at this particular point, your Honor, stands  
8 at the mercy of the Court.

9 THE COURT: Does the defendant wish to say  
10 anything on his own behalf?

11 THE DEFENDANT: There are so many things  
12 I would like to say but somehow I can't find the words  
13 right now. I just place myself at the mercy of the  
14 Court.

15 THE COURT: Does the United States Attorney  
16 have any remarks for us?

17 MR. BUCHWALD: Yes, your Honor, just briefly.

18 I have also read the presentence report.  
19 One or two matters contained in the presentence report that  
20 we would like to elaborate on, and a few matters which  
21 counsel just referred to, which I think would be appropriate  
22 for me to comment upon.

23 Firstly, with respect to the presentence  
24 report, it is a minor -- relatively minor matter, but just  
25 so that it might be totally accurate, at the bottom



1 bsbr 6

2 of page 4 there is a reference in the presentence report  
3 to a Victor Ramirez, who was recently convicted here.  
4 The presentence report, as I recall it, suggests that Mr.  
5 Ramirez had the telephone number of Willie Cortes-Rios bar,  
6 the Shangrila Bar in Dorado at the time of his arrest.  
7 In fact, Mr. Ramirez at that time had the telephone number  
8 of Willie Cortes-Rio's home in Bayamon.

9 THE COURT: I think that is a rather trivial  
10 distinction.

11 MR.BUCHWALD: There is a suggestion in the  
12 report that the home is not actually Mr. Rios but that of his  
13 brother, and we point out that documents which we have,  
14 for example, the telephone number, which goes to the home  
15 in Bayamon of Victor Ramirez had the name Willie with that  
16 phone number, the same phone number was seized from a search  
17 of Fernando Gallardo's apartment in January of 1975.

18 We have that phone record also with us, which  
19 again lists that telephone number in Puerto Rico under the  
20 W's, presumably for Willie, in accordance with the way  
21 Mr. Gallardo wrote all of his phone numbers, alphabetically  
22 with the first name as opposed to last name.

23 With respect to the question of the period of  
24 time in which Mr. Rios was involved, we have, of course,  
25 his admission as to the sale of heroin in June or July of

1 bsbr 7

2 1974 to Bonito Cruz and the admission of the trip t  
3 Alcalif for the purchase of heroin in September of  
4 1974.

5 We have statements -- these aren't areas of  
6 dispute, but his own statements as to the \$450,000 in cash  
7 which he laundered in March of 1976.

8 We have the safe deposit records of Willie  
9 Cortes-Rios which show virtually monthly or bi-weekly  
10 trips to the -- access to the safe deposit box, the Bayamon  
11 Federal Savings Bank from the period through the summer of  
12 1974 through March of 1976.

13 We have the safe deposit box records of the Dorado  
14 Banco Populaire, which show, again, visits to that  
15 safe deposit box in August of '74. Then a long period when  
16 he doesn't visit that, and then again in June and July of  
17 1976.

18 We have the fact that when Victor Ramirez is ar-  
19 rested in March of 1976, just after Fernando Gallardo has  
20 jumped bail, the people in New York are still selling heroin,  
21 that it is the Willie Cortes-Rios number that they have.  
22 We have the taped conversations, transcripts of which we  
23 have from June 25th of 1976, taped conversations between  
24 Raymond Rivera and Willie Cortes-Rios in which quite  
25 explicitly Mr. Rios is referring to purchases of heroin and



1 bsbr 8

2 cocaine, which he is going to make introductions -- intro-  
3 duce Raymond Rivera to the people who he himself deals  
4 with as sources for heroin, this being now in June and  
5 July of 1976.

6 That evidence that we would have adduced at  
7 trial would effectively have shown Mr. Rios being a  
8 recruiter for the Gallardo organization in '74, a right-  
9 hand man of the Gallardo organization, essentially, the  
10 financial man throughout the period of '75, laundering  
11 money in Puerto Rico, purchasing certificates of deposit,  
12 coming up to New York whenever someone is arrested with  
13 the bail money to reimburse individuals in New York; his  
14 passbooks would be put up with the magistrate for bail, and  
15 as someone who, after Gallardo jumps bail, is in contact  
16 with Gallardo and is in effect the funnel of information  
17 between Gallardo, who has left the country, and the dealers  
18 in New York who are still obtaining heroin and still working  
19 here in the city.

20 Inshort, as I believe the probation report  
21 reflects our position, that Mr. Rios was a king pin or  
22 right-hand man to the king pin of the largest heroin  
23 distribution organization in New York City that we are  
24 aware of in recent years.

25 We do not believe, as we indicated to the

1 bsbr 9

2 probation department, that there has been any meaningful  
3 cooperation rendered by Mr. Rios. This isn't something which  
4 we ask the Court to consider one way or another --

5 THE COURT: I think it is proper to consider  
6 in a positive sense. If he had been of great help to the  
7 government, I am sure that would be a matter which --

8 MR. BUCHWALD: We bring it up solely in the  
9 way the picture might have originally been presented to  
10 your Honor at the time of sentencing. There was an  
11 expectation of cooperation and we didn't want your Honor  
12 to feel that we felt that there had been any. There has  
13 not been any, and that is why we mention it explicitly.

14 I believe that that would conclude my remarks  
15 at this time.

16 THE COURT: I have gone over the presentence  
17 report quite particularly, and there was no doubt that  
18 the defendant has pled guilty to extremely serious  
19 offenses.

20 The two positive factors he has going in  
21 his behalf are the fact that he has a very minimal prior  
22 criminal record, almost inconsequential, and that he did  
23 enter a guilty plea which is some sign of rehabilitation and  
24 acknowledgment of his culpability.

25 Were it not for those factors I would be inclined



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to administer the maximum penalty because of the seriousness of the charges. However, I still feel that a very substantial sentence is called for. It is unpleasant during the holiday season to have to administer such a sentence, but the people who are injured by the distribution of narcotics suffer just as much during Christmas as they do during the rest of the year.

Consequently, I sentence the defendant on each count to a period of 12 years imprisonment, a fine of \$20,000, and special parole of three years to follow the prison term.

I sentence him to this on each of the two counts, time to run concurrently, credit for time served.

Anything further, gentlemen?

MR. BUCHWALD: Is that a committed fine?

THE COURT: Yes.

MR. BUCHWALD: Are the fines concurrent as well as the --

THE COURT: The fines are concurrent also, yes.

Of course you know, even with a committed fine, if he can produce the appropriate proof of indigency, to my understanding, it can be set aside, but unless he can establish his indigency it is a committed fine.

MR. SHAPIRO: We will produce the necessary

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2 documents for a Rule 35 motion at the appropriate time.

3 Thank you, your Honor.

4 MR.BUCHWALD: The government would consent  
5 to the dismissal of the open counts.

6 THE COURT: The remaining counts are dismissed.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
UNITED STATES OF AMERICA, :

v. :

76 Cr. 867

WILLIAM CORTES RIOS, :

Defendant. :

----- x  
Before:

HON. GERARD L. GOETTEL,

District Judge

New York, November 23, 1976  
4:30 p.m.

APPEARANCES

ROBERT B. FISKE, JR., Esq.,  
United States Attorney for the  
Southern District of New York,  
By: DON BUCHWALD, Esq.,  
Assistant United States Attorney

STANLEY L. SHAPIRO, Esq.,  
Attorney for Defendant.

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2 THE CLERK: United States of America  
3 v. William Cortes Rios.

4 MR. BUCHWALD: Ready for the government.

5 MR. SHAPIRO: Defendant is ready.

6 THE COURT: Have we sworn the interpreter  
7 yet?

8 THE CLERK: No.

9 (Graziana Lanus was sworn as the interpreter.)

10 THE COURT: Mr. Rios, when you were here  
11 last to enter a plea of guilty to certain of the counts  
12 of the indictment, I advised you of various rights that  
13 you would be waiving if you were to enter a plea of  
14 guilty.

15 It has been called to my attention that I  
16 have failed to advise you of one right which I know you  
17 were advised of at the time of your arraignment, but  
18 which were required to advise you again of at the time  
19 of taking a guilty plea. That is the fact that  
20 you cannot be compelled to incriminate yourself, which  
21 means, among other things, that you cannot be compelled  
22 to take the stand to testify. This right must be  
23 taken within the context and as being in addition to  
24 the other rights I advised you of, namely of your right  
25 to trial by jury, your right to confront and cross examine



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2 witnesses, the right to compulsory process to call wit-  
3 nesses on your own behalf, and the fact that you will  
4 be presumed innocent until such time, if ever, as the  
5 government established your guilt by competent evidence  
6 beyond a reasonable doubt.

7 By entering a guilty plea, you waive all  
8 of these rights, and you waive your right to trial.  
9 Do you understand all of that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is it still your wish to enter  
12 a plea of guilty to Counts 1 and 2 of the indictment?

13 THE DEFENDANT: Yes.

14 MR. BUCHWALD: Your Honor, if I might indi-  
15 cate, I believe at the time that the initial plea was  
16 taken on November 5, 1976, we indicated for the benefit  
17 of the defendant that the maximum sentence which he could  
18 receive on each of the counts that he was pleading guilty  
19 to was a sentence of 15 years plus \$25,000 fine plus,  
20 in the event of a term of imprisonment, a three-year  
21 special parole period, and I believe it would be more  
22 accurate to advise the defendant that if he is sentenced  
23 to a term of imprisonment, he would receive a minimum  
24 three years special parole period, but that in fact the  
25 special parole could extend for his entire life.



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2 THE COURT: I am not sure I understand that.

3 MR. SHAPIRO: Neither do I, Judge. The

4  
5 statute didn't apply to life --

6 MR.BUCHWALD: I understood it which I gather  
7 interprets among other things, the three-year special parole  
8 provision and indicates that in narcotics cases in fulfilling  
9 the obligation to advise the defendant of the maximum  
10 possible sentence we should indicate that there is the  
11 possibility that the special parole period can be longer  
12 than the three years and indeed can be a life period.  
13 It's been my --

14 THE COURT: Do you understand the special  
15 parole period as being a mandatory minimum, but not a  
16 maximum so that he has to get at least three years parole  
17 following jail sentence, but he can get much in excess  
18 of that?

19 MR. BUCHWALD: That is my understanding.  
20 I have never , in fact, seen that done. I have always  
21 seen the three years, but that's my understanding.

22 MR.SHAPIRO: My understanding would be up to the  
23 maximum of the term sentenced. For example, if this Court  
24 were to sentence him for 15 years and he was put on a  
25 payroll after five, my understanding is he must do another



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2 three years parole, and for the remaining seven years of  
3 his sentence he can be put on parole for seven, that's  
4 the way I understood the decision.

5 THE COURT: What section are you relying on,  
6 Mr. Buchwald?

7 MR. BUCHWALD: Well, I am relying first upon  
8 Journet's opinion at page 378.

9 THE COURT: What section of the law does it  
10 cite for that?

11 MR. BUCHWALD: That's just what I am checking.

12 MR. BUCHWALD: My recollection offhand is that  
13 the sentencing provision is in 21 USC 841 itself.

14 THE COURT: I don't have 21 USC. I only have  
15 18 USC here. I just don't see where a court gets the  
16 power to impose a parole as opposed to a probationary  
17 period, even that not to exceed the maximum penalty.

18 MR. BUCHWALD: In Journet, which is a  
19 narcotics case wherein the defendant was advised of the  
20 three-year special parole period, Judge Mansfield indicated  
21 that the District Judge failed to warn appellant that  
22 the maximum possible penalty included a lifetime parole  
23 after reciting the facts that the defendant was advised of  
24 a three-year special parole period and then goes on to  
25 indicate that each one of the required advices must be given



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2 in court.

3 MR. SHAPIRO: I would raise the question  
4 as to whether or not the Journet case as mentioned by  
5 Mr. Buchwald contained a possible provision of a case  
6 involving a possible life sentence for narcotics.

7 MR. BUCHWALD: It's 21 USC 841 (a)(1), the same  
8 statute which the defendant is charged under.

9 My own recollection of the statute is that the  
10 reference to three-year special parole is a minimum period  
11 of three year special parole, and while in fact the  
12 procedure that I have lived with day in and day out is  
13 that three years is what the judges seem to invariably  
14 live, I have not, except in the case of a multi-offender,  
15 seen larger— where the six-year special parole period is  
16 applicable, I gather within the terms of the statute it is  
17 possible to get a lifetime parole.

18 In any event, I would see no harm in so advis-  
19 ing the defendant that that is a possibility, it increases  
20 the possible maximum, and I think as long as he understands  
21 the worse that could happen, we come within the meaning  
22 and intent of Rule 11 in Journet, even if it turns out  
23 that in fact the worse could not have happened.

24 THE COURT: I will advise the defendant  
25 that, as he will recall when he was last here I told him



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2 what the maximum penalty provided by law was.

3 I indicated that there was a mandatory parole period of  
4 three years following the jail sentence.

5 It is the position of the prosecutor that parole  
6 period can be much longer and indeed could even be light.  
7 I am not presently convinced that this is so, but appar-  
8 ently it is a possibility, and I think you should know about  
9 this possibility before you enter a guilty plea.

10 Counsel, do you want to talk to him for just  
11 one moment about it?

12 MR.SHAPIRO: Just one second.

13 (Discussion off the record.)

14 MR.SHAPIRO: Your Honor, I believe he fully  
15 understands it now and I have advised him that even if  
16 this possibility exists, the probability of this court  
17 imposing that upon him would be extraordinarily slim in the  
18 circumstances of his offense.

19 I also advised him that I doubt the con-  
20 stitutionality of the statute permitting a life parole on  
21 a sentence which is not in itself carrying life such as the  
22 New York drug statute by analogy.

23 THE COURT: Title 18, Section 4205(b) allows  
24 the Court to release the prisoner at an earlier time and  
25 place him on parole, which I think you can refer to as



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mandatory parole situation, so that obviously, by implying

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that you could impose a parole term which is combined

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with the jail term, as long as it is the maximum sentence

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you could sentence him to; but, the maximum sentence here

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is what, 15 years?

7

MR.SHAPIRO: Yes, your Honor.

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MR.BUCHWALD: 15 years, \$25,000 fine and a spe-

9

cial parole period.

10

THE COURT: I can see where you could, if you

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took the absolute maximum and imposed a jail term and

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parole time having a total of 30 years plus possibly the

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three-year mandatory parole on top of that, maybe, I don't

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know. I just don't see where the authority is for a

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lifetime parole. It may exist, and I am telling you that

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it may exist. It is a theoretical possibility.

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I don't see any need to go over the details

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of the offense again. I went over them in great detail

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last time.

20

MR. BUCHWALD: Your Honor, I would not either.

21

There is one matter also raised by the Journet decision

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under Rule 11(c)(5) where our office is recommending to

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the District Court, until such time as there may be

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further elaboration by the Second Circuit, that the

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defendant be specifically advised in the terms of 11(c)(5),



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2 that if he pleads guilty the Court may ask him questions  
3 about the offense to which he has pleaded, and if he  
4 answers these questions under oath on the record and in  
5 the presence of counsel, his answers may later be used  
6 against him in a prosecution for perjury or false statement.

7 THE COURT: The problem with that probability  
8 is we are already over that bridge. I questioned him  
9 not to under oath, and I am not going to do it again, so  
10 I don't see why I should advise him about theoretical  
11 possibility that existed at an earlier time and no longer  
12 exists.

13 MR. BUCHWALD: Your Honor, we are not ask-  
14 ing -- your Honor follows the practice that many of the  
15 district judges follow in not putting the defendant under  
16 oath during the voir dire.

17 THE COURT: I have never seen one put under oath  
18 in this court. It may be done, but I have never seen it  
19 done.

20 MR. BUCHWALD: Most of them do not.

21 Nonetheless, it would appear to us and we are  
22 strongly urging it upon the district court and until we get  
23 clarification from the Second Circuit particularly in  
24 cases which we consider of great significance to us, that  
25 the defendant be so advised. In all cases, certainly in

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the cases of the district judges who follow the practice

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not putting the defendant under oath, it seems entirely

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academic advice of oath, but in view of the strongest

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possible language from Judge Mansfield, sitting with him,

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Judge Kaufman, even though it does seem to me to be somewhat

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academic, we urge upon the court that the defendant be

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so advised.

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THE COURT: To keep you happy, I will

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advise him that prior to the time that I conducted an inquiry

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of the details of your offense, I had the power to place

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you under oath, and if you had answered those questions

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under oath and had answered them falsely you could have been

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prosecuted for perjury.

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However, it is not my present intention to

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question you again about the details of the offense.

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Consequently, there's been no possibility of perjury

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charged.

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MR. BUCHWALD: I take it the defendant would

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perhaps be most appropriate, the defendant before he

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reindicates if it is his intention to stand by his guilty

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plea or the plea of guilty, to indicate his understanding

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that if your Honor so chooses to place him under oath --

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THE COURT: No. At that point you compound

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confusion that even the Second Circuit couldn't approve



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2 of.

3 MR. BUCHWALD: Your Honor, while Journet, in  
4 many respects, is a decision that's causing a great deal  
5 of difficulty for myself and many of my colleagues, it  
6 does rely on the language of the statute which is real  
7 mandatory in terms. I don't want to make more of a pest  
8 of myself than I have already, your Honor --

9 THE COURT: I am merely going to ask him whether  
10 he understands all of the rights I have explained to him  
11 and whether, knowing all of these things, he still wishes  
12 to plead guilty.

13 MR. BUCHWALD: May I ask that in so asking  
14 him you specifically make reference on the record in  
15 open to this --

16 THE COURT: You may ask but I am not going to.

17 MR. BUCHWALD: I would indicate for the  
18 purposes of my record that if for any reason in view of  
19 the fact that this has been read to him here in open court,  
20 and I gather by the defendant's responses to this point  
21 that he understands what has been said to him in open  
22 court, that if for any reason it is in fact required that  
23 the academic exercise of reading it to him occur in  
24 open court that I expect that any error would be harmless.

25 THE COURT: I did read it to him, and I didn't

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2 place him under oath, and I am not going to.

3 MR. BUCHWALD: I so gathered.

4 THE COURT: Coming back to the defendant,  
5 having been advised of all of these rights, do you under-  
6 stand your rights?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is it still your wish to abandon  
9 your right to a jury trial and to plead guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I accept the plea of guilty as  
12 having been made knowingly, voluntarily and having a  
13 basis in fact and based upon the extensive discussion  
14 at the last appearance indicating that the acts of the  
15 defendant contain all of the elements of the crime, and  
16 the plea of guilty is therefore accepted to Count 1 and 2.

17 MR. SHAPIRO: Your Honor, the sentencing date will  
18 remain the same.

19 THE COURT: Everything else will remain the  
20 same. The presentence report is already ordered. I am  
21 sorry to bring you all back here again.

22 MR. SHAPIRO: I would ask this Court if it  
23 would be possible to sentence him at 9:30 in the morning  
24 of the 22nd, the reason being I am due to catch a flight  
25 out of New York that evening.



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2 THE COURT: What time are we scheduled for  
3 now?

4 MR.SHAPIRO: I believe it is the morning, I am  
5 not sure

6 THE COURT: It says 10 a.m. We will move  
7 it forward to 9:30.

8 MR. SHAPIRO: 10 a.m. is fine.

9 THE COURT: All right, well --

10 MR. BUCHWALD: I have it at 9:30.

11 THE COURT: You are right.

12 MR.SHAPIRO: I will be here at 9:30 in any  
13 case.

14 (Time noted 4:50 a.m.)

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SHAPERO

STATE OF NEW YORK     )  
                              : SS.  
COUNTY OF RICHMOND    )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 4 day of ~~XXXX~~ March 1977 deponent served the within *Appendix* upon

U.S. Atty., So. Dist. of NY

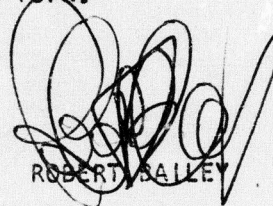
attorney(s) for

Appellee

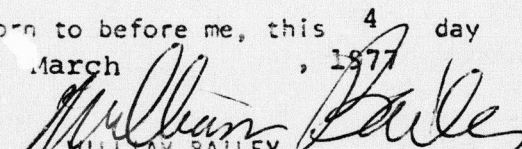
In this action, at

1 St. Andrews Pl., New York, NY

the address(es) designated by said attorney(s) for that purpose by depositing \_\_\_\_\_ copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
ROBERT BAILEY

Sworn to before me, this 4 day  
of March, 1977

  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1978